

Attorney Docket No. : 5762.200-US
Application Serial No.: 09/577,694
Filed: May 22, 2000
Inventors: Sorensen et al.

Remarks

In the previous office action, the Examiner rejected the pending claims as obvious in view of Kasai and/or Rheude.

Kasai et al. relates to a medical container stopper comprising a polymeric material containing:

- a) 30-90 % butyl-based rubber and
- b) 10-70 % thermoplastic elastomer.

According to the new claims, applicants' invention relates to a stopper comprising

- a) 70-90 % butyl bases rubber and
- b) 10-30 % polyolefin, wherein the polyolefin is not elastomeric.

Support for the new claim can be found in the specification, e.g., page 8 ("In a less preferred embodiment the stopper material is a thermoplastic elastomer selected from the groups consisting of 1,2-polybutadiene, styrene-based elastomers and polyester elastomers").

The term thermoplastic elastomer is not specifically defined in Kasai. However, examples of the thermoplastic elastomer used in the stopper in Kasai are mentioned in claim 3 and they are all elastic materials. By definition, an elastomer is an "elastic materials that resemble rubber (resumes its original shape when a deforming force is removed)". Hence, the term thermoplastic elastomer in Kasai does not cover the preferred polyolefines which are used in the stopper of the present invention and now required by the claims to be non-elastomeric.

Thus, not only is the present invention a selection from the 30-90 % range for butyl-based rubber, but also it specifically excludes the elastic thermoplastics required by Kasai. Therefore, the claimed invention is neither anticipated nor obvious in view of the cited references.

As the independent claims are not obvious or anticipated by the cited references, the dependent claims must also be patentable. In particular, the claims reciting specific shore hardness are in no way inherent in the prior art as the prior art shows the use of elastomeric material blended with rubber. Such is now specifically excluded from the pending claims.

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Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Commissioner is hereby authorized to charge any fees in connection with this application and to credit any overpayments to Deposit Account No. 14-1447. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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